IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 304 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYABHAI BHIKHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 304 of 2004

MR KV SHELAT for Petitioner No. 1-2

Mr.Gori, Asst.GOVERNMENT PLEADER for Respondent No. 1,4

MR RN SHAH for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 08/10/2004

ORAL JUDGEMENT

Rule. Mr.Gori, Ld.AGP waives service of rule on

behalf of respondent No.1 and 4. Mr.Shah appears and waives service of rule on behalf of respondent Nos 2 and 3. With the consent of learned advocates for parties matter is taken up for final hearing today.

2. Upon hearing the learned advocates for the parties, it appears that there is no dispute on the point that the Entry No.6540, dated 20.8.1987 was certified on the basis of family settlement. However, after a period of about 15 years the proceedings are initiated for cancellation of the entry on the ground that such transfer by way of family settlement is in contravention of the provisions of Sectin 43 and 84(C) of Bombay Tenancy and Agricultural Lands Act(hereinafter referred to as "the Act"). The authorities have found that there was breach of sectin 43 and 84(C) of the Act and therefore cancelled the certification of the entry and the proceedings are also ordered to be initiated under the Act. There is no dispute on the point that the lower authorities were exercising powers under Bombay Land Revenue Code and the alleged socalled breach is committed in connection with the said entry under the provisions of the Act and therefore in view of the reasons recorded by this court on 28.9.04 in SCA No.12547/04(Jayantilal Jethalal Soni vs State of Gujarat) the entry deserves to be continued with the clarification that the same is, primafacie, in breach of provisions of sections 43 and 84(C) of the Act and the certification shall be subject to the finalisation of the proceedings by the competent authority under the Act.

3. It further appears that the Mamalatdar has also initiated proceedings under section 84(C) of the Act and the petitioner has to file additinal reply. Therefore, the petitioner may file reply to the proceedings under section 84(C) of the Act which are initiated by the Mamalatdar and while filing the reply and while raising defence to the show cause notice, the petitioner may also contend the grounds which may be available under law. Since the proceedings under section 84(C) are at the stage of show cause notice, same is not required to be interferred with at this stage leaving the contentions of both sides open on the said aspects.

4. In view of the aforesaid, petition deserves to be allowed partly by modifying the orders passed by the authorities below to the extent that the Entry No.6540, dated 20.8.87 shall continue to remain in revenue record with the clarification that the Mamalatdar, Olpad has initiated proceedings under section 84(C) of the Act and certification is subject to the finalisation of

proceedings by the competent authority unde the Act.

So far as challenge to the show cause notice under section 84(C) of the Act is concerned, petition is premature and said challenge therefore is not required to be entertained at this stage.

5. Petition is allowed to aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances, there shall be no costs.

8.10.04 (JAYANT PATEL,J)